IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 20631 of 1997

Between:

M/s.Bajrang Iron & Steel Trading Corporation, ½, Lord Sinha Road,

6th Floor, Calcutta-700 071, rep. by its Proprietor Bajrang Churiwal S/o.Satyanarayan Churiwal, Aged: 45 years.

..... PETITIONER

AND

1. Union of India, Govt. of India, Department of Space, rep. by its heads of Accounts & I.F.A., Shar Centre, Sriharikota Range, Sriharikota-524 124, Nellore District.

2. The Deputy Commercial Tax Officer, Sullurupeta – 524 121, Nellore District.

3. The Commissioner of Commercial Taxes, Govt. of Andhra Pradesh, Hyderabad.

4. The Principal Secretary to the Revenue Department, Government of Andhra Pradesh, Secretariat, Hyderabad.

5. The Commercial Tax Officer, Naidupet, Nellore District.

(R-5 is impleaded as per Court order dated 30-9-1997 in WPMP No.29045 of 1997)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ order or direction directing the respondent No.1 to refund the Central Sales Tax of Rs.58,295.54 collected from the petitioner against the sale order dated 21-9-1990 as illegal, contrary to law, and direct the same to be refunded to the petitioner forthwith together with interest at the rate of 24% per annum from the date of collection of Central Sales Tax illegally by the respondent No.1.

Counsel for the Petitioner : MR.TEJPRAKASH TOSHNIWAL

Counsel for the Respondent No.1 : MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondents No.2 to 5 : Spl.G.P. for Taxes.

The Court made the following :

ORDER : (per Hon'ble Sri Bilal Nazki, J)

Heard learned Counsel for the parties and perused the record.

Case of the petitioner is that he was carrying on business of iron and steel material and was registered under West Bengal General Sales Tax Act (W.B.G.S.T) and Central Sales Tax Act (for short 'C.S.T. Act') at Calcutta. Iron and steel were declared goods and would fall under entry 2 of the III Schedule of the Andhra Pradesh General Sales Tax Act (for short 'the A.P.G.S.T. Act') and C.S.T. Act and the goods that fall under Section 14 of C.S.T. Act were goods of special importance and were liable to sales tax at the point of first sale at 4 per cent.

The respondent No.1 issued tender notice on 21.5.1990 for sale and removal of surplus steel materials of various categories, lying at the premises of M/s.Triveni Structural Limited, Naini, Allahabad.

Following facts are not in dispute;

1. That the tender notice was issued by respondent No.1 from Andhra Pradesh.

2. Goods were sold at Naini, Allahabad and they were purchased by the petitioner, who was a Registered dealer under both the Acts in Calcutta.

On various grounds, the petitioner has challenged the action of respondents in charging tax from him. One of the grounds, which has been taken, is that respondent No.1 was not a dealer within the meaning of Explanation 2 to Section 2(b) of C.S.T. Act, which reads as under;

> *"**Section 2(b)-Explanation 2** : A Government which, whether or not in the course of business, buys, sells, supplies or distributes goods directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply or distribution or surplus, unserviceable or old stores or materials or waste products or absolute of discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act."*

Since admittedly this was a surplus sale in terms of Section 2(b) of the C.S.T. Act, the Respondent No.1 was not a dealer at all therefore, tax could not have been levied on such a sale. For this reason alone, we allow the Writ Petition, set aside the impugned orders and hold that the petitioner shall be entitled to recovery of the tax deducted, from the Respondent No.1, who admittedly has not transferred it to the Sales Tax authorities. The amount be refunded within six weeks from today.

Writ Petition is accordingly allowed. No order as to costs.

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(BILAL NAZKI, J)

8th November, 2004.

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(S.ANANDA REDDY, J)

ajr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Monday, the Eighth Day of November, Two Thousand and Four.

To

1. The Head of Accounts & I.F.A., Union of India, Govt.of India, Shar Centre, Sriharikota Range, Sriharikota-524 124, Nellore District.
2. The Deputy Commercial Tax Officer, Sullurupeta – 524 121, Nellore District.
3. The Commissioner of Commercial Taxes, Govt. of Andhra Pradesh, Hyderabad.
4. The Principal Secretary to the Revenue Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
5. The Commercial Tax Officer, Naidupet, Nellore District.
6. Two C.D. copies.
7. Two C.Cs. to the Special Government Pleader for Taxes, High Court of A.P., Hyderabad (O.U.T)